IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

THURSDAY, THE 23RD AUGUST 2007 / 1ST BHADRA 1929

WP(C).No. 21109 of 2007(K)

PETITIONER:

R.PRAKASAN, KOIPPELLI, KIZHEKKETHIL,
VETTUKENI, HARIPAD.

BY ADV. SRI.P.RAVINDRAN

RESPONDENTS:
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1. TRAVANCORE DEVASWOM BOARD, REPRESENTED BY ITS SECRETARY, THIRUVANANTHAPURAM.

2. COMMISSIONER, TRAVANCORE DEVASWOM BOARD, NANTHANCODE, THIRUVANANTHAPURAM.

3. ASSISTANT DEVASWOM COMMISSIONER, MAVELIKKARA.

BY ADV. SRI.D.SREEKUMAR, SC, TDB

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 23/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.
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W.P.(C) NO. 21109 OF 2007
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Dated this the 23rd day of August, 2007

J U D G M E N T

Petitioner is a Sambathi under the first respondent Board and has been posted at the Thrippakkudam Devaswom since 16/7/06. Ext.P2 is a show cause notice issued by the 2nd respondent, in which certain allegations of misconduct have been raised against th petitioner, based on a report of the Sub Group Officer. It is also stated that the Sub Group Officer has reported that in the circumstances narrated therein, petitioner should be immediately transferred from the Sub Group. For the misconducts alleged, he was called upon to show cause why further action should not be initiated against him. On receipt of Exhibit P2, petitioner submitted Ext.P3 reply. In Ext.P3, he has made allegations against the Sub Group Officer and concluded by stating that it was on account of his refusal to obey the illegal demands of the Sub Group Officer that the illmotivated report was furnished by the Sub Group Officer. He therefore requested

the authorities to exonerate him from the charges. Thereafter petitioner received Ext.P4 during May 2007, whereunder he has been transferred to Harippad Devasom. Against Ext.P4 order of transfer, petitioner submitted Ext.P5 appeal and during its pendency he was allowed to continue at Thrippakkudam Devaswom itself. Later by Ext.P6, he was relieved from the post and thereafter he got Ext.P7 order dated 8/6/07, which is the proceedings of the Devasom Commissioner rejecting his appeal. Challenging Exts.P4 and P7 and to direct the authorities to allow him to continue at Thrippakkudam Devaswom for a period of three years from 16/7/06, this writ petition has been filed.

2. The respondents have filed a statement. It is stated that the Sub Group Officer submitted a report containing serious allegations against the petitioner and on the basis of the report, Ext.P2 show cause notice was issued. It is also stated that it is on the basis of the report of the Sub Group Officer that the petitioner was transferred to Harippad Devaswom. According to the Board, the transfer norms, in particular Clause 3 thereof, empowers the authorities to transfer an employee on the basis of

complaints and lapses. It is also stated that the appeal filed by the petitioner before the 2nd respondent has been rejected on the basis of the "aforementioned report of the 3rd respondent", the Sub Group Officer.

3. The learned counsel appearing for the writ petitioner submits that by Ext.P2 show cause, the petitioner was called upon to show cause on various allegations including as to why he should not be transferred from Thrippakkudam and that reply has been given. Before considering or taking a decision on the reply so given, Ext.P4 order of transfer was issued. According to him, it is only on the basis of the report of the Sub Group Officer, whose illegal demands were not acceded by the petitioner. The learned counsel submits that the transfer norms permit an employee to continue at a station for a minimum period of three years and that except in exceptional situation, the employees should not be disturbed before expiry of the period.

4. I have considered the submissions of the learned counsel. On going through Ext.P2 show cause notice, I notice that it was issued calling upon the petitioner to show cause as to

why disciplinary action should not be initiated against him. The allegations of misconducts based on which action is proposed, have been mentioned in the show cause notice. Show cause notice also mentioned that in the background of the allegations of misconduct, the report of Sub Group Officer requires that the petitioner shall be transferred from out of the Devaswom immediately. According to me, he was called upon to show cause only against the allegations of misconduct, and not against that part of Ext.P2, wherein it mentions about the report for transferring him from the Devaswom. Therefore, the contention of the petitioner that before a decision was taken in the light of the reply submitted by the petitioner, he has been transferred is without any substance.

5. As regards the contention of the learned counsel for the petitioner for continuance of an employee at a place for three years and except in exceptional situation the employee should not be disturbed, that cannot be reason for retaining the petitioner at a station in the light of the allegations that are raised against him. In any case, such norms cannot bind the

Devaswom in all circumstances and cannot be a foundation for continuance. Therefore the contention that Ext.P4 has been issued without any application of mind does not survive.

6. Ext.P5 appeal has been decided by Ext.P7. Ext.P7 does not contain any reason except that show cause notice has been given. The statement filed by the Board shows that the appeal was rejected on the basis of the report of the 3rd respondent, Sub Group Officer. In the light of the fact that the petitioner has raised allegations against the 3rd respondent, in the reply to the show cause notice and also in the appeal memorandum filed by him, the appellate authority ought not have confined its examination to the report of the 3rd respondent alone. Appellate authority should have independently examined the merits of the contentions, which has not been done. Therefore, Ext.P7, to the extent it rejects the appeal of the petitioner reflects non application of mind and requires to be quashed.

7. Accordingly, Ext.P7, to the extent the petitioner's appeal has been rejected, is quashed and the 2nd respondent will

reconsider Ext.P5 appeal of the petitioner, as expeditiously as possible and pass fresh orders thereon. This shall be done within a period of four weeks from the date of receipt of a copy of this judgment.

Writ petition is disposed of as above.

ANTONY DOMINIC, JUDGE.

Rp